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97TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
No. 97-906

COMPLETED ORIGINAL

REGULATIONS CONCERNING THE EDUCATION OF THE HANDICAPPED ACT

SEPTEMBER 30, 1982.—Referred to the House Calendar and ordered to be printed

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Mr. PERKINS, from the Committee on Education and Labor, submitted the following

REPORT

[To accompany H. Res. 558]

The Committee on Education and Labor, to whom was referred the resolution (H. Res. 558) expressing the sense of the House of Representatives that regulations recently proposed by the Secretary of Education under the Education of the Handicapped Act should not be permitted to take effect, having considered the same, report favorably thereon with an amendment and recommend that the resolution as amended do pass.

The amendment (stated in terms of the page and line numbers of the introduced resolution) is as follows:

Page 3, line 5, immediately after "all" insert "final".

SUMMARY OF THE RESOLUTION

House Resolution 558 expresses the sense of the House of Representatives that the proposed changes in the regulations implementing Public Law 94-142, the Education for All Handicapped Children Act, which appeared in the Federal Register on August 4, 1982 should be rejected in their present form and should not be permitted to take effect during any period when Congress is in recess. It further states that the portion of section 431 of the General Education Provisions Act which provides inter alia for Congressional disapproval of all final regulations, would be applicable in the instant case. In particular, it explains that Congress should use such disapproval power if the final regulations promulgated by the Secretary of the Department of Education are inconsistent with the Education of the Handicapped Act.

LEGISLATIVE CONSIDERATION

House Resolution 558 was introduced on August 10, 1982 by Mr. Biaggi (for himself), Mr. Richmond, Mr. Weiss, Mr. Brodhead, Mr.

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Y1.1/8:97-906

Fithian, Mr. Pepper, Mr. McGrath, Mr. Markey, Mr. Horton, Mr. Bedell, Mr. Smith of New Jersey, Mr. Santini, Mr. Moakley, Mr. Won Pat, Mr. Hoyer, Mr. Ford of Tennessee, Mr. Stark, Mr. Rodino, Mr. Downey, Mr. Bingham, Mrs. Chisholm, Mr. Adabbo, Mr. Gejdenson, Mr. Hopkins, Mr. Ratchford, Mr. Wolpe, Mr. Edgar, Mr. Gilman. Mr. Gore. Mr. Miller of California. Mr. Roe, Mr. Pevser. Mr. Foglietta, Mr. Boner of Tennessee, Mr. Martinez, and Mr. Wortley. It presently has 110 cosponsors.

A comparable measure, Sense of the Senate Amendment 1198, was introduced by Senator Lowell Weicker on August 10, 1982. It was passed by a vote of 93–4 as an amendment to H.R. 6863, the 1982 Supplemental Appropriations Bill. H.R. 6863 was vetoed by the President and this veto was overridden by Congress.

The Subcommittee on Select Education of the House Education and Labor Committee held three oversighrt hearings to examine the proposed changes in the regulations published in the Federal Register (47 Federal Register 33835 et eq.) under the Education for All Handicapped Children Act. In addition, over 700 letters were received by the Subcommittee regarding the proposed regulations.

Hearings were held in Washington, D.C. on September 22, 23 and 29. Witnesses testifying during the September 22 hearing were: Joseph Glassford, Superintendent, Wabash and Ohio Valley Special Education District, Norris City, Illinois; Carolyn Pell, English Teacher, McLeansboro High School, McLeansboro, Illinois; Jean Ramage, School Psychologist, San Diego, California; John Lancaster, Office of the Governor, State of Maryland; Joanne Goldsmith, President, Maryland State Board of Education; David Hornbeck, Chief State School Officer, State of Maryland; and Martha Irvin, Assistant State Superintendent and Director of Special Education, State of Maryland.

On September 23 witnesses included. Ann Dunbar, School Board #12, Bronx, New York; Louis Finch, Superintendent, Anoka-Hennepin School District, Koon Rapids, Minnesota; Jean Garvin, Director of Special Education, State of Vermont; Martin Gerry, Esq., Washington, D.C.; Timothy Graham, Student, Brooklyn, New York; Nancy Myer, Special Education Teacher, Minnesota; and Leet Viets, Parent of a Handicapped Child, Hyde Park, Vermont.

Witnesses testifying on September 29 were. Terrel H. Bell, Secretary, Department of Education; accompanied by George Conn, Acting Assistant Secretary for Special Education and Rehabilitative Services; Ed Sontag, Director, Special Education Programs; Shirley Jones, Acting Director for Policy, Special Education Programs; and Thomas C. Anderson, Special Counsel to the Secretary. In addition. Samuel Craighead, Assistant Executive Director, Intermediate Unit #1, California, Pennsylvania. and Joan Kost (accompanied by her son, Erich) testified before the Subcommittee.

On September 29, 1982, the Subcommittee met in legislative session to consider House Resolution 558. After a brief discussion, the bill was unanimously reported to the Committee on Education and Labor by a roll call vote.

On September 30, 1982, the Committee on Education and Labor orderced it reported by unanimous voice vote with one amendment.

JUSTIFICATION FOR THE LEGISLATION

With the passage of Public Law 94–142, the Education for All Handicapped Children Act, in 1975, Congress granted to all handicapped children the "right" to a free appropriate public education. Prior to the development of this legislation many handicapped children were sitting in regular classrooms unidentified, others were receiving inappropriate services and some handicapped children were receiving no educational services at all. Public Law 94–142 is the vehicle through which the federal government maintains a partnership with the states and localities to end the educational neglect of handicapped children. As specified in the Act, a "free appropriate public education" includes specially designed instruction to meet the unique needs of a handicapped child and related services which may be necessary to assist a handicapped child to benefit from this instruction. Both of these are to be provided at no cost to parents. In 1977 final regulations implementing the Education for All Handicapped Children Act were issued defining this "right" to an education for all handicapped children. It is currently estimated that more than four million handicapped children are presently receiving services under the Act.

The proposed changes in the regulations implementing the Education for All Handicapped Children Act were published in the Federal Register on August 4, 1982. In keeping with the Committee's policy, instituted during the past three years, to closely review regulations for programs under its jurisdiction, the Committee very carefully reviewed these proposed regulations.

The Committee held three days of hearings on these proposed regulations and carefully reviewed the hundreds of letters they received on this issue. They heard not only from advocates and parents, but from governors, state boards of education, chief state school officers, state directors of special education, superintendents, school board members, attorneys, special education teachers, regular education teachers and handicapped students themselves. While many of these individuals supported some small changes in the present Public Law 94–142 regulations, they stated consistently that the Administration's proposed regulatory changes would not provide their states and local school districts with more flexibility, they would not relieve administrative burdens, they would not ensure a decrease in litigation under the Act, and most importantly, these proposed regulations would not improve the provision of educational services to our nation's handicapped children. Input received by the Committee strongly indicates that these proposed regulations would do little more than create new problems for state and local governments, school officials and parents of handicapped children.

Some of the major changes in these proposed regulations are found in the definitions, the timeline requirements, the nonsupplanting requirements, the provisions on free appropriate public education, the procedural safeguards and due process protections and the least restrictive environment requirements. Many of the detailed requirements present in the existing regulations have been deleted.

One of the most significant changes is found in the definition of related services. While both existing and proposed regulations include the provision for medical services for diagnostic or evaluative pur-

poses, the proposed regulations further state that a public agency is not required to provide life sustaining procedures that can be provided outside of the normal school day, must be performed under sterile conditions, must be administered by specially-trained, licensed health care professionals or entail significant risk or illness or more than minimal injury. In addition, the proposed regulations allow public agencies to impose "reasonable limitations" on the level, frequency, and duration of the related services required, as well as on the qualifications of the providers of those services. Further, the proposed regulations delete the definitions of the term "related services" which are given in the existing regulations. Witnesses testified that this proposed change could decrease the quality of services provided to handicapped children and might be used to exclude them from participation in the regular classroom with their non-handicapped peers.

Another proposed change in the regulations implementing Public Law 94–142 would allow school districts to consider whether a handicapped child would cause a "substantial and clearly ascertainable disruption" to the education of non-handicapped students, when determining an appropriate placement for the child. In addition, the proposed regulations delete the requirement that where possible the handicapped child's educational placement be close to the child's home. Testimony the Committee received on these issues indicated that what constitutes a "disruption" for one person might not for another and, therefore, this provision would increase the likelihood that a handicapped child would be excluded from placement in the regular classroom. Further, if a child need not be educated in a setting close to his home, school districts may choose to transport a handicapped child a long distance rather than develop a program at the neighborhood school.

Lastly, the proposed change in these regulations which drew the most concern from parents was the deletion of the requirement that school officials obtain parental consent before an initial evaluation or placement of a handicapped child. This change would significantly alter the role of parents in their handicapped child's education.

In conclusion, the Committee does not agree with the Administration that these proposed regulatory changes in Public Law 94–142, the Education for All Handicapped Children Act, reaffirm the "right" granted to handicapped children in 1975. While they acknowledge that some slight changes in the existing regulations may be indicated, they feel strongly that these proposed regulations are not consistent with the Education of the Handicapped Act and if published as final regulations in their present form, could be subject to rejection.

OVERSIGHT

No funding or recommendations concerning oversight of the regulations affected by this resolution have been received by the Committee from the Committee on Government Operations. However, the Committee's action in reviewing these proposed regulations and rejecting them in their present form represents prudent oversight of a program within its jurisdiction.

COST ESTIMATE

House Resolution 558 has no effect on any authorizations or appropriations for any program. Therefore, there will be no additional cots to the Federal Government incurred as a result of the passage of this resolution.

INFLATIONARY IMPACT

Since this resolution does not involve any additional costs, the Committees concludes that it has no inflationary impact.

SECTION-BY-SECTION

ANALYSIS OF PROVISIONS OF HOUSE RESOLUTION 558

The first section of the resolution provides that it is the sense of the House of Representatives that (1) proposed Department of Education regulations affecting assistance to States for the education of handicapped children should be rejected and should not be permitted to take effect while the Congress is in recess, and the Committee would assume that the Secreary would refrain from publication of the final gegulations for a reasonable time after the reconvening of the Congress in January 1983 to assure adequate and reasonable review; and (2) provisions in the General Education Provisions Act governing congressional disapproval of education regulations apply to the final Department of Education regulations, and the Congress should disapprove the final regulatons under such provisions if the regulations are inconsistent with the Education of the Handicapped Act.

The Committee has labored for the past two years to establish a set pattern practice for the review of regulations. To solve many of the questions which have arisen and to insure that should the Committee's review right ever be officially challenged, we would be in the strongest possible position, we have established certain practices and understandings among the majority of the Committee, the minority ont the Committee and the Department. These positions, which are to protect the Committee process and responsibiliy, have also been supported by other groups, such as Legislative Counsel and the Library of Congress.

For this reason, two points should be very clear: (1) this resolution states a sense of the Congress and does not purport to disapprove the proposed regulation for the Education for All Handicapped Children Act, Public Law 94–142, and (2) the intent reflected in paragraph (2) accurately reflects the feelings of the Members, but does not limit or bind the Committee to take any specific action. We will review these regulations with particular care when the final regulations are published.

CHANGES IN EXISTING LAW

House Resolution 588 makes no changes in existing law.

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